

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

**IN RE: NEW ENGLAND
COMPOUNDING PHARMACY, INC.
PRODUCTS LIABILITY LITIGATION**

MDL No.: 1:13-md-2419-RWZ

This Document Relates To:

All Cases

**RESPONSE OF PLAINTIFFS' STEERING COMMITTEE TO MSM'S REQUEST
TO DEFER OR ABSTAIN FROM IMMEDIATELY RULING ON PENDING
DISCOVERY DISPUTE**

On March 10, 2015, the St. Thomas Entities moved "to enforce" this Court's January 15, 2015 Order (the "Order"), Document No. 1659, which permitted certain discovery of one of the settling parties, ARL Biopharma, Inc. d/b/a Analytical Research Laboratories ("ARL"). (Docket No. 1724) The Order provided that the discovery of ARL was permissible if it was "relevant to the prosecution, or defense, of claims against defendants other than ARL" and that the discovery stay "does not...block discovery relevant to certain defenses (including comparative fault or negligence) or claims from ARL¹."

As the basis for its motion, the St. Thomas Entities alleged that it had served written discovery on ARL (requests for production of documents, interrogatories, and requests for admissions) on March 9, 2015 and, that, on the same day, the discovery

¹ The order was identical to the relief granted in a prior order for other settling parties. See Document No. 1481.

requests were served, ARL’s counsel had sent an email refusing to respond to the discovery requests.

On March 23, 2015, ARL filed its response to the St. Thomas Entities’ motion, Document No. 1745, arguing that the discovery against it should be limited. Nonetheless, ARL stated that it now was willing to provide to the document repository “all ARL documents relevant to NECC-related claims.” (Id. at p. 4.) At the March 25, 2015 status conference, this Court suggested that ARL submit its documents to the document repository and ARL’s counsel agreed to do so. The PSC understands that the ARL documents have been produced by ARL to the document repository and that ARL has been given an extension of time until May 9, 2015 to respond to the St. Thomas’ written discovery requests. On April 2, 2015, defendant MSM filed a request to defer or abstain on ruling on the St. Thomas motion (Docket No. 1762) and, on April 3, 2015, St. Thomas filed a response to MSM’s request (Docket No. 1770).

As the St. Thomas Entities concede, its “motion to enforce only covers ARL, not any other defendant.” (St. Thomas Entities Opposition to MSM’s Request to Defer or Abstain From Immediately Ruling on Pending Discovery Dispute, Docket No. 1770, p. 3.) Moreover, the St. Thomas Entities’ motion only sought an order “compelling ARL Biopharma to fully participate in all comparative fault discovery.” (Docket No. 1724.) Now that ARL is making its document production to the repository and has received an extension of time to respond to the St. Thomas’ written discovery requests, the PSC does not believe that there is currently any dispute which the Court need resolve. The PSC disagrees with MSM that the Court should put off resolving an active discovery dispute now in favor of resolving all discovery disputes at some undefined future time. Disputes

should be addressed promptly, as they arise. But this particular dispute appears to be resolved.

Dated: April 23, 2015

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CERTIFICATE OF SERVICE

I, Fredric L. Ellis, hereby certify that I caused a copy of the above *Response of Plaintiffs' Steering Committee to MSM's Request to Defer or Abstain From Immediately Ruling on Pending Discovery Dispute* to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: April 23, 2015

/s/ **Fredric L. Ellis**
Fredric L. Ellis